



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)	Before the Examiner
Thomas Zdeblick et al.)	Julian W. Woo
)	
Application Serial No. 10/644,252)	Group Art Unit 3731
)	
Filed August 20, 2003)	Ref. No. PC242.38/
)	4002-3378
)	
INTERBODY FUSION DEVICE AND)	November 12, 2004
METHOD FOR RESTORATION OF)	
NORMAL SPINAL ANATOMY)	

TERMINAL DISCLAIMER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Sir:

Petitioner, SDGI Holdings, Inc., having a place of business at 300 Delaware Avenue, Suite 508, Wilmington, Delaware 19801, is the owner of one hundred percent (100%) interest in the instant application, U.S. Patent Application Serial No. 10/644,252, filed on August 20, 2003 for an INTERBODY FUSION DEVICE AND METHOD FOR RESTORATION OF NORMAL SPINAL ANATOMY, as evidenced by the following documents: Assignment from Thomas Zdeblick to Danek Medical, Inc., recorded at Reel 7468, Frame 0849; Assignment from Eddie Ray, III and Lawrence M. Boyd to Danek Medical, Inc., recorded at Reel 7468, Frame 0855; and Assignment from Danek Medical, Inc. to SDGI Holdings, Inc., recorded at Reel 8811, Frame 0663. Petitioner has reviewed the evidentiary documents and certifies that, to the best of Petitioner's knowledge and belief, title to the application is in the Petitioner.

Petitioner hereby disclaims the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154-156 and 173 of U.S. Patent No. 5,669,909, filed


on March 30, 1995 for an INTERBODY FUSION DEVICE AND METHOD FOR RESTORATION OF NORMAL SPINAL ANATOMY. Petitioner agrees that a patent so granted on the instant application shall be enforceable only for and during such period that it and U.S. Patent No. 5,669,909 are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154-156 and 173 of U.S. Patent No. 5,669,909 in the event that either of such patents: expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321; has all claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term.

The undersigned, Charles R. Reeves, is an attorney of record for both the instant application and the issued patent referenced above and is empowered and authorized to act on behalf of the Petitioner in making this Terminal Disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: November 9, 2004


Charles R. Reeves
Reg. No. 28,750

**FEE TRANSMITTAL
FOR FY 2004**

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27Total Amount of Payment (\$)**110.00****Complete if Known**

Application Number	10/644,252
Filing Date	August 20, 2003
First Named Inventor	Thomas Zdeblick et al.
Group Art Unit	3731
Examiner Name	Julian W. Woo
Attorney Docket Number	4002-3378/PC242.38

METHOD OF PAYMENT☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number
23-3030Deposit Account Name
Woodard, Emhardt, Moriarty,
McNett & Henry LLP

The Commissioner is authorized to: (check all that apply)

- ☐ Charge fee(s) indicated below ☒ Credit any overpayments
- ☒ Charge any additional fee(s) during the pendency of this application, excluding the payment of issue fees
- ☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION**1. BASIC FILING FEE**

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility Filing Fee	
1002	340	2002	170	Design Filing Fee	
1003	530	2003	265	Plant Filing Fee	
1004	770	2004	385	Reissue Filing Fee	
1005	160	2005	80	Provisional Filing Fee	
SUBTOTAL (1)					(\$) 0.00

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee From Below	Fee Paid
32	-32** = 0	X 18.00	= 0.00
9	-3** = 0	X 86.00	= 0.00
Multiple Dependent			

Large Entity	Small Entity	Fee Description
Fee Code	Fee Code	Fee (\$)
1202	2202	9 Claims in excess of 20
1201	2201	43 Independent claims in excess of 3
1203	2203	145 Multiple dependent claim, if not paid
1204	2204	43 **Reissue independent claims over original patent
1205	2205	9 **Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)**0.00**

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner's Action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner's Action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Petitions related to provisional applications	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
110				Terminal Disclaimer	110.00

Other Fee (specify)

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)**110.00****SUBMITTED BY**

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45,431

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Signature

Date

November 15, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.